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No. 08-399

Supreme Court, U.S.
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In The

# Supreme Court of the United States

LADERRICK CAMPBELL,

*Petitioner,*

v.

STATE OF LOUISIANA,

*Respondent.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## CAPITAL CASE
## QUESTIONS PRESENTED

1. Is the trial judge no longer to be accorded due deference in ruling on challenges for cause?

2. Does historical precedent endorse jury nullification?

3. Does *Indiana v. Edwards* apply to a state which does not impose counsel on a mentally ill defendant who wishes to represent himself?

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## STATEMENT OF FACTS

On the evening of February 11, 2002, Kathy Parker was working as a cashier in the Magnolia Club in the tiny town of Rodessa, Louisiana. At about nine o'clock two young black males entered the Magnolia and robbed Kathy Parker with a shotgun. The robbery was recorded by one of four video surveillance cameras, which reflected that the taller of the two men, later identified as petitioner, Laderrick Campbell, held the shotgun pointed at Ms. Parker and, once she had emptied the cash register, shot her in the chest after she had begged him not to kill her. Kathy Parker died from blood loss due to the shotgun blast to her chest. Petitioner and his partner in crime, James "Peanut" Washington, ran out of the Magnolia and sped away in a waiting car. The entire robbery and murder took less than a minute. (Tr. Vol. 11, pp. 2246-2249, 2354; Vol. 12, p. 2498)

Petitioner's voice was recognized by a patron of the Magnolia. Later, Detective Charles Bradford recognized both men on the video from seeing them around in the small town of Rodessa. The bar patron, Cardell Jackson, had known both men from the time they were small children. He also identified Washington as being the other robber. (Tr. Vol. 11, pp. 2212-2213, 2219, 2226-2230) Petitioner and Washington were arrested on a warrant together in Texas. Washington admitted his involvement and took police to the location where the shotgun had been hidden. Petitioner made a statement to police upon his arrest

in which he denied any involvement in the offense. (Tr. Vol. 11, pp. 2213-2215; Vol. 1, pp. 174-190)

The video surveillance tape was shown to the jury by both the prosecution and defense. (Tr. Vol. 11, pp. 2208, 2246-2248; Vol. 12, pp. 2497-2500) The driver of the getaway car, Lakischa "Keeta" Holloway, and the car's owner, Virginia Burkette, both testified to the events leading up to and following the robbery and murder, and positively identified petitioner as being the one who had the gun. (Tr. Vol. 11, pp. 2271-2280, 2363-2371)

Petitioner was unhappy with the way his defense counsel were handling his case and with what he perceived as the weakness of the State's case against him. He made several complaints to the court in earlier proceedings, claiming that the state had no evidence other than hearsay against him, and filing several *pro se* motions. (Tr. Vol. 2, p. 493; Vol. 3, pp. 497-517, 530; Vol. 5, pp. 959-971, 977, 1014) Petitioner accused his counsel of physically assaulting him before the trial began and made several accusations during *voir dire* that his counsel, and others, were using hand signals to communicate with the jury. (Tr. Vol. 5, pp. 1026-1031; Vol. 6, p. 1324; Vol. 7, pp. 1336-1347, 1411-1421; Vol. 8, pp. 1730-1736, 1740-1743, 1749-1760, 1776-1779; Vol. 9, pp. 1866-1867, 1902-1907)

Finally, petitioner told the court that he wanted to represent himself, after complaining of his counsel's *voir dire* on intent. After a lengthy colloquy, the

court agreed. Standby counsel was appointed, consisting of the senior members of the Caddo Parish Indigent Defender's Office, Alan Golden and Kurt Goins, who had been representing petitioner up to that point, and with whom he apparently consulted during the remainder of *voir dire* and the guilt phase. (Tr. Vol. 9, pp. 1925-1970; Vol. 10, pp. 1976-1999, 2173; Vol. 11, p. 2349) After the guilty verdict had been returned, petitioner told the court that he wanted his standby counsel to represent him for the penalty phase, which they did. (Tr. Vol. 11, p. 2437; Vol. 12, pp. 2445-2446)

Petitioner was convicted of the first degree murder of Kathy Parker, and was sentenced to death by the unanimous vote of the jury. On appeal, the Louisiana Supreme Court affirmed petitioner's conviction and sentence. *State v. Campbell,* 2006-0286 (La. 5/21/08), 983 So.2d 810, *rehearing denied* (La. 6/27/08). This application for writ followed.

## ARGUMENT

### I. DEFERENCE IS STILL DUE TO THE TRIAL JUDGE'S DETERMINATIONS OF MERITS OF CHALLENGES FOR CAUSE

On appeal petitioner complained that the trial court improperly refused three challenges for cause to the defense, and improperly granted two challenges for cause to the State. These complaints have now been reduced to two: one prosecution challenge for

cause that was granted and one defense challenge that was denied.

Appellant also agues that where potential jurors are excluded under *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968) challenges, the resultant jury lacks impartiality and is more conviction-prone. This argument was addressed and rejected by this Court more than twenty years ago in *Lockhart v. McCree*, 476 U.S. 162, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986). The State, just as the defense, is entitled to jurors who will follow the law. *Lockett v. Ohio*, 438 U.S. 586, 596-597, 98 S.Ct. 2954, 2960, 57 L.Ed.2d 973 (1978). Moreover, the State has a strong interest in selecting jurors who are able to apply capital punishment "within the framework state law prescribes." *Uttecht v. Brown*, ___ U.S. ___, 127 S.Ct. 2218, 2224, 167 L.Ed.2d 1014 (2007).

Petitioner oddly cites Justice Scalia's dissent in *Morgan v. Illinois*, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992) for the proposition that a juror should not be excluded because of her attitude towards capital punishment. Oddly because in *Morgan*, the juror was one who would have voted automatically *for* the death penalty.

Perhaps petitioner is willing to accept the selection of jurors who are strongly inclined to impose the death penalty as well as those who are strongly inclined to vote for a life sentence: after all, under Louisiana law the State must get all twelve jurors to agree in order to obtain a death penalty, whereas the

defense needs only one hold-out against the death penalty in order to obtain a life sentence.[1]

Procedural safeguards already stringently favor a life sentence. Out of twelve jurors, even if there were eleven jurors who would impose death automatically, and only one juror who would automatically vote for a life sentence, a sentence of life would be imposed. The "playing field" is already tilted against the imposition of a death sentence.

Viewed in light of these realities, petitioner's professed desire for a "level playing field" is revealed as specious: the odds for a life sentence would be, and still are, in the criminal defendant's favor, and not at all "level."

Petitioner is asking this court to make a review of the credibility of jurors Lee and Payne based on a

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[1] Louisiana Code of Criminal Procedure Article 905.6 Jury; unanimous determination

> A sentence of death shall be imposed only upon a unanimous determination of the jury. If the jury unanimously finds the sentence of death inappropriate, it shall render a determination of a sentence of life imprisonment without benefit of probation, parole or suspension of sentence.

La.C.Cr.P. Art. 905.8 Imposition of sentence

> The court shall sentence the defendant in accordance with the determination of the jury. If the jury is unable to unanimously agree on a determination, the court shall impose a sentence of life imprisonment without benefit of probation, parole or suspension of sentence.

cold record. Petitioner apparently seeks to extend *Snyder v. Louisiana*, ___ U.S. ___, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008) to include some requirement that the trial judge must have made a finding on the record in order for the trial court's ruling to be granted the deference to which it is due. *Snyder*, a *Batson* case, does not stand for that proposition, however.

Due deference is not dependant on the trial court making any specific analysis or findings on the record. Rather, the principle recognizes that the trial court is in a superior position to determine the demeanor and qualifications of a potential juror. *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985), and *Uttecht,* 127 S.Ct. at 2223-2224.

### A. Equivocal answers did not outweigh Ms. Lee's positive assertions of inability to return death sentence

The Louisiana Supreme Court took a thorough and well-rounded view of Ms. Rosie Lee's *voir dire*:

> The defendant challenges the trial court's decision to grant the state's challenge for cause as to Rosie Lee. When the prosecutor asked the group of prospective jurors if there was anyone among them who could not impose the death penalty because of personal or religious beliefs, Lee answered that she could not. She explained: " . . . ***it's against my religion. I don't believe you should take a person's life. I think they should be put***

***up in a place where they can be rehabilitated or life in prison***." When asked if her opposition to the death penalty would remain the same, regardless of the evidence, she concluded that she would "have to really pray about it and see the evidence before I could vote to take a man's life or a woman's life."

Later, the district attorney returned to Lee, who acknowledged that it would not be fair to the other jurors if someone who was opposed to the death penalty under any circumstance sat on the jury. Taking that sentiment into consideration, the district attorney then asked her again if she could consider the death penalty. Lee answered, ***"No, I could not decide to take a man['s] life"*** and ***"I couldn't do the death penalty on no man or no woman." The district attorney continued to question Lee about her opinion and she consistently and adamantly claimed that she could not impose the death penalty***.

Upon questioning by defense counsel, Lee acknowledged her "strong feelings" against the death penalty. ***When pushed to articulate circumstances where she would impose the death penalty, Lee concluded that she would only do so if it was "outright evil" such that "[the defendant] had no compassion, beat to death, really angry, then after that killed and all that, like they was tortured or something."*** Under these circumstances, Lee

acknowledged, for the first time during voir dire, that she would "consider" the death penalty. However, she qualified her admission by suggesting that she would also consider "the age factor" before coming to the decision.

When asked by defense counsel if she could sit on the jury, even with her strong feelings, and consider the death penalty for someone convicted of an intentional murder, Lee responded, "Yes, I could sit on a death penalty [case] and consider it and think about it and pray about it and come up with a decision." But when pressed to clarify whether she could render a death verdict for such a person, Lee replied, ***"[i]f they could prove that he was a – was really like a torture, a bad serious, really didn't have no conscious [sic] about killing nobody, yes, sir."***

After the state challenged Lee for cause, ***the trial court acknowledged that her answers to the state had been forthright in her inability to consider the death penalty under any circumstances***. Although the trial court was aware of Lee's admission that she would consider the death penalty if it were a case of "outright evil," ***the trial court indicated his satisfaction that the totality of Lee's responses indicated an inability to impose the death penalty.***

We find no abuse of the trial court's discretion in granting the state's cause challenge

> as to prospective juror Lee. Much deference "must be afforded to a trial court's first-hand observation of tone of voice, body language, facial expression, eye contact, or juror attention." . . . This court has previously held "significantly, it is in the determination of substantial impairment that the trial judge's broad discretion plays the critical role." . . . ***Lee's admission that she would consider the death penalty under certain extreme circumstances is outweighed by her consistent statements during the majority of voir dire that she would not impose the death penalty under any circumstance. As a result, the trial court properly granted the state's challenge***.

*State v. Campbell*, 2006-0286 (La. 5/21/08), 983 So.2d 810, 863-864, emphasis added, footnotes and citations omitted.

The few instances where Ms. Lee claimed she would impose the death penalty were the most extreme, and ultimately unconvincing. In short, Ms. Lee's responses were so equivocal that the trial court did not err in granting the state's challenge for cause. In *Uttecht,* the Court upheld the excusal of a juror on the same basis, observing that even assurances that a juror would consider imposing the death penalty and would follow the law do not require the trial court to deny the State's motion to excuse, if "these responses were interspersed with more equivocal statements," *id.* at 2227, 2229.

Even if there had been error by the trial court in granting the State's challenge for cause of Ms. Lee, it was harmless. The record reflects that the State used only five of its twelve allotted peremptory challenges, so that even if the State challenge complained of had been improperly granted, the State did not receive any undue advantage thereby.

Under Louisiana Code of Criminal Procedure Article 800.B, the State must have exhausted all its peremptory challenges before a defendant may complain about the alleged improper granting of challenges for cause. *State v. Jackson*, 450 So.2d 621, 627 (La. 1984), *State v. Wilson*, 467 So.2d 503, 514 (La. 1985), *certiorari denied* 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (1985), *rehearing denied* 474 U.S. 1027, 106 S.Ct. 585, 88 L.Ed.2d 567 (1985). In other words, the State would have removed Ms. Lee with a peremptory challenge if the challenge for cause had been denied.[2]

### B. Juror Payne clearly able to consider sentencing options

Appellant also complains that one of his challenges for cause should have been granted. The

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[2] The State is aware of the seemingly contrary holding of this court in *Gray v. Mississippi*, 481 U.S. 648, 107 S.Ct. 2045, 95 L.Ed.2d 622 (1987). *Gray*, however, was based on peculiar factual circumstances, including the trial court granting the state additional peremptory challenges to make up for the trial court's wrongful denial of meritorious challenges for cause, factual peculiarities which are not present in the instant case.

dispositive question is whether a potential juror is "substantially impaired in his or her ability to impose the death penalty under the governing legal framework." *Uttecht,* at 2224. As noted above, the trial court is accorded great discretion in its decision to grant or deny peremptory challenges, and such a decision is entitled to great deference when it is fairly supported by the record. *Witherspoon, supra.* The trial court's ruling warrants deference, even on direct review. *Uttecht,* at 2223.

Petitioner claims that his challenge for cause of prospective juror Payne should have been granted, alleging that he refused to consider specific mitigating circumstances, and would only consider life where the murder was justified. On the contrary, Mr. Payne stated that he would impose the death penalty if the murder was brutal, or a case of "overkill" where the victim was shot or stabbed three or more times, and characterized himself as middle of the road, saying "we've got to be reasonable." (Tr. Vol. 6, pp. 1172-1173) The victim in the instant case suffered a single gunshot wound.

Appellant also omits that portion of Mr. Payne's *voir dire* where he assured the court that he would consider mitigating factors, even if not proven beyond a reasonable doubt, if that's what the judge told him to do. (Tr. Vol. 6, p. 1173) He stated that he would consider the mitigating factors of lack of a substantial criminal history and remorse. He also stated that if there were two equally reasonable theories of the offense, one being an intentional shooting (first

degree murder) and one being an accidental shooting (second degree murder), he would return a verdict of second degree murder. (Tr. Vol. 6, pp. 1145-1146, 1158, 1179; Vol. 8, p. 1581)

As to Mr. Payne, the Louisiana Supreme Court found, in part:

> When asked his feelings about the death penalty, Payne responded:
>
> > ***I think of the death penalty as necessary to the degree that the murder was unnecessary. The brutality, the savagery, the unnecessity [sic] of the killing. Obviously, the mitigating factors with me have a bearing, some have no bearing on that list with me, but some could have a bearing with me.***
>
> When the prosecutor asked further questions about Payne's ability to consider the mitigating circumstances that might be presented, Payne replied:
>
> > ***I'm an opinionated person, but before I make an opinion I try to pull all the factors in. And just reading those seven things [mitigating circumstances], and I understand there can be many other factors, but just reading some of those, for example, the first one up there no significant***

> ***prior criminal history, depending on the savagery of the murder, that may or may not have any significance with me . . .***

However, when asked point-blank whether he could consider imposing a life sentence, Payne responded, "sure" and indicated he could consider either a life sentence or the death penalty. In addition, Payne told the prosecutor that he could vote for a death penalty, "but I won't do it because 11 other people felt that way. I believe this is 12 separate decisions that would have to be made."

Defense counsel engaged in an extended colloquy with Payne. When defense counsel asked Payne to describe several aspects of his feelings about the death penalty, Payne responded:

> ***Well, that's about an hour long speech. I think it is necessary.*** I have to believe that when someone is intending to commit a murder, it has to be in their mind that there could be the death penalty involved. They probably never think that they're going to get caught or they're too angry or whatever the situation, but I still think that it is a deterrent. Are there downsides to it, sure. If someone is convicted wrongly, then that's a horrible situation. ***But some of the savagery and some of the brutality that we see in murder, just the callousness I think***

> ***make the death penalty extremely necessary.*** I don't have reservations about invoking the death penalty on ***someone if the situation is warranted . . .***

Defense counsel asked Payne if he leaned one way or the other as far as imposing the death penalty or a life sentence for an armed robbery and an intentional killing. Payne replied ***"[t]hat's fully hard to answer that because I don't know the real facts of the case."*** Finally, as defense counsel began to ask yet another question on this issue, Payne answered:

> I'm open to anything, okay. But it's going to be very difficult. Again, I once said during the mitigating, if you use mitigating circumstances with me, you're going to have to prove them beyond a really reasonable doubt. I mean, I hear a doctor come in and say the person is mentally ill, you're going to have to make me understand that really good for me to accept that.

***When defense counsel asked whether Payne could consider mitigating circumstance if instructed to do so by the judge, even if the mitigating evidence was far less than beyond a reasonable doubt, he answered, "Yes, I would consider it." . . .***

When asked to describe his feelings about a life sentence, Payne indicated:

> I think that's a tough sentence assuming they don't get out of prison. I have to consider the victim in that, also, and I think that the death penalty is going to put an end to it for that person, for the two people, the victim and the accused, but that doesn't end it for the other folks. I don't like this term closure because I don't think there is closure. On the other hand, a life sentence, I think the reason we should send people to prison is so we can redeem them. And if you're sending them for life with no parole, redemption is not necessary because they're not ever going to get out anyway . . .

When asked later whether religious ideas about redemption were valid considerations for a life sentence, Payne replied:

> They're all considerations, but I, too am a religious person, but you know, you can be forgiven just before you are executed, too. . . . So I don't have a problem with life imprisonment, but it has to be a pretty good standard for me to get out of the death penalty, ***assuming the kinds of crime that I have discussed previously about the brutality, the savagery, the callousness, the intent, the meanness***. Mitigating

> circumstances are going to have to prove to me that life imprisonment is deserving.
>
> Finally, Payne indicated that anger was not an excuse for a first degree murder.
>
> Defense counsel challenged Payne for cause arguing that he would require the defense to prove mitigating circumstances beyond a reasonable doubt; thus, holding the defense to a higher burden than was required by law. The state objected. After listening to the argument of counsel, the trial court denied the defense challenge for cause as to Payne.
>
> ***Considering the whole of Payne's voir dire testimony, we do not find any abuse of the trial court's discretion in denying the challenge for cause. Payne's willingness to follow the court's instructions combined with his willingness to impose life imprisonment or the death penalty, depending on the circumstances, negated the defense's inference that Payne was biased, prejudiced, or unable to render a judgment according to law. Thus, the trial court properly denied the defense challenge for cause.***

*Campbell, supra,* 983 So.2d at 859-862, emphasis added, footnotes omitted.

In *Uttecht* the Court reaffirmed *Witherspoon* and *Witt,* regarding the great discretion afforded the trial court in granting challenges for cause of a juror on the ground of an inability to be impartial in deciding

whether to impose the death sentence. The trial judge in the instant case made determinations based on his assessment of each juror's responses and demeanor, and those determinations are entitled to due deference.

Although petitioner makes sweeping claims about the increase of juries "that are uncommonly and arbitrarily willing to sentence a person to death," the facts do not show that there has been a disproportionate number of death penalties returned by the juries so selected. In the First Judicial District of Louisiana, where this case arose, for example, from 1976 to the present, there have been 41 persons convicted of first degree murder. Of these, only seventeen were sentenced to death. Others tried for first degree murder were found guilty of lesser offenses. This hardly amounts to a disproportionate number: if petitioner's claim were true that the juries selected under *Witherspoon* and *Witt* are so eager to impose the death penalty, a number much closer to 100 percent would be expected.

Petitioner has shown no abuse of the trial court's great discretion in ruling on challenges for cause. Viewing the *voir dire* of each of these jurors as a whole, as the Louisiana Supreme Court has done, it is clear the trial court did not err in denying appellant's challenge for cause or in granting the State's challenge. Petitioner's claims are without merit.

## II. HISTORICAL PRECEDENT DOES NOT SUPPORT PETITIONER'S ASSERTIONS

### A. Blackstone

Petitioner attempts to invoke historical precedent in support of his claim that so-called "*Witherspoon* excludables" would not have been excludable "at the time of the founding." Petitioner begins by making a rather telling omission from his assertion that "(i)n Blackstone's England, as at common law, there were only four challenges for cause."

What petitioner omits is the fact that, "in Blackstone's England," the mid-18th century, the death penalty was *mandatory*, not only for murder and treason, but also for 150 other offenses. Blackstone's *Commentaries on the Laws of England*, Book IV, Chapter 1, page 18. Blackstone addresses the matter of determining which crimes are deserving of the death penalty as follows:

> "When a question arises, whether death may be lawfully inflicted for this or that transgression, the wisdom of the laws must decide it: and to this public judgment or decision all private judgments must submit: else there is an end of the principle of all society and government." *Ibid*, Ch. 1, p. 11.

It is apparent that Blackstone pondered the fact that individual jurors might have personal opinions contrary to that established by the law as to the suitability of capital punishment for particular offenses: these "private judgments must submit" to the wisdom of the laws.

The jury in "Blackstone's England," unlike modern capital juries, had no direct input into the sentence to be imposed, so a juror's opinion regarding the death penalty was not consulted. *Voir dire* as to a juror's opinion regarding the imposition of sentence would therefore have been irrelevant.

Blackstone refers to "deliberate and willful murder; a crime at which human nature starts, and which is I believe punished almost universally throughout the world with death." *Ibid,* Ch. 14, p. 194. In "Blackstone's England" the judge imposed the mandatory sentence for all capital crimes and he and the king alone were empowered to impose a lesser sentence if so moved. In fact, as Blackstone observed, lesser capital offenses were often punished by the imposition of fines, imprisonment and deportation rather than the death penalty. *Ibid,* Book IV, Ch. 1, p. 19, Ch. 14, p. 202.

Since the time of Blackstone and of the Framers, qualification for jury service has shifted away from classifications based on nobility, wealth, freehold status, landownership, gender and race, to jurors who are able to understand and apply the law as given to them by the courts. This represents the American tradition of regard for the procedural rights of every individual defendant to have an impartial jury, setting aside antiquated preconceptions of juror suitability based on birth and social standing. Such preconceptions are anathema in a country founded on the principle that all men are created equal.

The Louisiana capital sentencing system places trust in individual jurors and juries to render the appropriate sentence based on the facts of the case and the character and propensities of the offender. Adopting Blackstone's juror qualification system, as petitioner seems to urge, would prohibit consideration of jurors who are otherwise qualified to serve, contrary to egalitarian principles.

Petitioner has not made a showing, or even a convincing argument, that any historical basis for addressing this issue, even Blackstone, would be enlightening or instructive. Petitioner's argument rests on a selective and distorted review of the evolution of jury selection.

### B. The Framers

Petitioner raises questions long answered regarding whether a jury may determine that a law is unconstitutional. In *U.S. v. Callender,* 25 F.Cas. 239, 255-257 (C.C.Va. 1800), Justice Samuel Chase, signatory of the Declaration of Independence, expounded:

> Was it ever intended, by the framers of the constitution, or by the people of America, that it should ever be submitted to the examination of a jury, to decide what restrictions are expressly or impliedly imposed by it on the national legislature? I cannot possibly believe that congress intended, by the statute, to grant a right to a petit jury to declare a statute void . . .

> If a petit jury can rightfully exercise this power over one statute of congress, they must have an equal right and power over any other statute, and indeed over all the statutes; for no line can be drawn, no restriction imposed on the exercise of such power; it must rest in discretion only. If this power be once admitted, petit jurors will be superior to the national legislature, and its laws will be subject to their control . . .
>
> From these considerations I draw this conclusion, that the judicial power of the United States is the only proper and competent authority to decide whether any statute made by congress (or any of the state legislatures) is contrary to, or in violation of, the federal constitution. That this was the opinion of the senate and house of representatives, and of General Washington, then president of the United States, fully appears by the statute, entitled "An act to establish the judicial courts of the United States," made at the first session of the first congress.

To seat jurors who would refuse to follow the law would be to invite chaos, as these great legal minds clearly understood. *Callender, supra, Blackstone, supra,* Book IV, Ch. 1, p. 11.

Petitioner's thinly veiled assertion of the right to seat a juror who he anticipates will invoke jury nullification is insupportable. There is no right to jury nullification. *U.S. v. Funches*, 135 F.3d 1405, 1408-1409 (11th Cir. 1998), *certiorari denied* 524 U.S.

962, 118 S.Ct. 2389, 141 L.Ed.2d 754, *Standefer v. United States*, 447 U.S. 10, 22, 100 S.Ct. 1999, 2007, 64 L.Ed.2d 689 (1980).

Despite this fact, there can be no denying that jury nullification does occur, and that such occurrences are without recourse for the State in criminal trials: there is no appeal from a jury's acquittal, and there is no provision under Louisiana law for challenging a jury's verdicts in a capital case. Prosecutors must therefore be alert to indications that a juror may be inclined to resort to nullification. The exercise of peremptory challenges is uniquely suited to addressing such possibilities.

Petitioner's claim is without merit.

## III. *INDIANA V. EDWARDS* IRRELEVANT TO INSTANT CASE

Appellant attempts to apply a recent capital opinion from this court, *Indiana v. Edwards*, ___ U.S. ___, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008), to the instant case. *Edwards* held that a state may choose to require a mentally ill criminal defendant to submit to representation without violating *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). *Edwards* holds that such a requirement is not unconstitutional.

*Edwards* is inapplicable even on the most cursory reading. Louisiana has passed no such legislation nor has it invoked such a rule, and there is therefore no

need for a remand for the Louisiana Supreme Court to reconsider its opinion "in light of *Indiana v. Edwards*." The trial court appointed standby counsel for petitioner after a more than thorough *Faretta* colloquy. After conducting part of *voir dire* and all of the defense case in the guilt phase, petitioner decided to accept the representation of his standby counsel for the penalty phase.

The Louisiana Supreme Court thoroughly reviewed petitioner's complaints that he was not competent to represent himself and rejected them. *Campbell, supra*, 983 So.2d, at 851-854. In fact, the court, even while noting the pendency of *Edwards*, also noted its irrelevance to the instant case:

> We are aware that the United States Supreme Court has granted certiorari and heard oral argument in the case of *Indiana v. Edwards*, 07-208. However, the question presented in *Edwards* is whether a state *may* impose a higher standard: "May a criminal defendant who, despite being legally competent, is schizophrenic, delusional, and mentally decompensatory in the course of a simple conversation, be denied the right to represent himself at trial when the trial court reasonably concludes that permitting self-representation would deny the defendant a fair trial." The State of Indiana required a criminal defendant who requested self-representation to meet a higher standard of competency than the standard of competency for proceeding to trial. Louisiana does not

> impose a higher standard; thus, we do not believe the Court's holding in *Edwards* will impact our decision here. In the event that the Court overrules its previous holding in *Godinez* [*v. Moran,* 509 U.S. 389, 398, 113 S.Ct. 2680, 2686, 125 L.Ed.2d 321 (1993)], however, the defendant will be permitted to raise the issue, depending on when *Edwards* is rendered, either on rehearing or in post-conviction.

*Campbell, supra,* at 853, fn. 149.

As of this date, therefore, the competence that is required of a Louisiana defendant seeking to waive his right to counsel remains "the competence to waive the right, not the competence to represent himself." *Godinez, supra*, at 399, 113 S.Ct., at 2687. Petitioner's reliance on *Edwards* is misplaced. This claim is without merit.

## CONCLUSION

Respondent shows that writ should not be granted in the instant case:

I. Petitioner has failed to show that the trial judge or the Louisiana Supreme Court erred in ruling on the challenges for cause of which he complains, and he has failed to show that a new/old approach to *voir dire* on the death penalty is either required or desirable.

II. Petitioner's appeal to historical sources is ill-founded. Neither Blackstone nor the Framers were in favor of installing jurors who would be unable or unwilling to apply the law as it was given to them.

III. Finally, there is no constitutional rule that a trial court must foist an unwanted attorney on a competent defendant who wishes to represent himself at trial, even if that defendant is also mentally ill.

WHEREFORE, the State of Louisiana prays that Laderrick Campbell's application for writ of certiorari be denied.

Respectfully submitted,

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